STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

AMERICAN FOODS, INC., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 77-CE-9-V 4 ALRB No. 29

DECISION AND ORDER

Pursuant to the provisions of Labor Code Section 1146, the Agricultural Labor Relations Board has delegated its authority in this matter to a three-member panel.

On September 4, 1977, Administrative Law Officer (ALO) Jeffrey S. Pop issued the attached Decision in this case, finding that the Respondent violated Labor Code Section 1153 (a) by refusing to submit a list of employees to the ALRB within five days after the United Farm Workers of America, AFL-CIO (UFW) filed a Notice of Intention to Organize, as required by 8 Cal. Admin. Code Section 20910 (c) (1976). Thereafter, Respondent filed timely exceptions to the finding of a violation and to the ALO's recommended remedial order that Respondent reimburse the General Counsel and the Charging Party for reasonable attorneys fees and costs incurred in the preparation and litigation of this case.

The Board has considered the record and the attached Decision in light of Respondent's exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the

ALO and to adopt his recommended Order, as modified herein.

We affirm the ALO's conclusion that Respondent violated Section 1153(a) of the Act by its refusal to submit an employee list as required by 8 Cal. Admin. Code Section 20910(c). However, we reject the ALO's conclusion that Respondent's contentions herein are frivolous, and we do not adopt his recommended Order insofar as it provides for an award of attorneys' fees and costs to the General Counsel and the Charging Party.

We have previously recognized that implicit in employees' Section 1152 rights is the 'opportunity of workers to communicate with and receive communication from labor organizers about the merits of self-organization. Henry Moreno, 3 ALRB No. 40 (1977). We have also held that this communication at the homes of employees is not only legitimate but crucial to the proper functioning of the Act. Silver Creek Packing Co., 3 ALRB No. 13 (1977), Refusal to submit a list of employees to the ALRB as required by 8 Cal. Admin. Code Section 20910 (c) (1976) deprives employees of their right to receive communication from labor organizers at their homes. In order to balance the loss of communication the employees would have had at their homes but for the Employer's unlawful conduct, we will order that during the next UFW organizational drive of Respondent's employees:

1. That upon the filing of a Notice of Intent to Take Access the UFW shall be allowed one additional organizer per 15 employees. This organizer is in addition to the number of organizers already permitted under Section 20900 (e) (4) (A).

2. That Respondent shall be required to permit the UFW

an opportunity during one hour of regular working time, to disseminate information to and conduct organizational activities among Respondent's employees.

3. That during the UFW's next organizational drive the Respondent shall be required to provide the UFW with an employee list at the beginning of its harvest and every two weeks thereafter until the harvest is concluded.

ORDER

Respondent, American Foods, Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to provide the ALRB with an employee list as required by 8 Cal. Admin. Code Section 20910 (c) (1976).

(b) In any other manner interfering with, restraining or coercing any employee in the exercise of rights guaranteed by Section 1152 of the Agricultural Labor Relations Act.

2. Take the following affirmative actions which are deemed necessary to effectuate the policies of the Act:

(a) Execute the Notice to Employees attached hereto. Upon its translation by a Board Agent into appropriate languages, Respondent shall reproduce sufficient copies in each language for the purposes hereinafter set forth.

(b) Post copies of the attached Notice for a period of ninety consecutive days, to be determined by the Regional Director, at places to be determined by the Regional Director. Respondent shall exercise due care to replace any Notice which has been altered, defaced, or removed.

(c) Mail a copy of the Notice, in all appropriate languages, to each of the employees in the bargaining unit, at his or her last known address, not later than 31 days after the receipt of this Order.

(d) Provide for a representative of the Respondent or *a* Board Agent to read the attached Notice in appropriate languages to the assembled employees of the Respondent on company time. The reading or readings shall be at such times and places as are specified by the Regional Director. Following the reading, the Board Agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

(e) Provide the ALRB with an employee list forthwith, as required by 8 Cal. Admin. Code Section 20910 (c) (1976).

(f) Provide, during the UFWs next organizational drive among the Respondent's employees, the ALRB with an employee list as described by 8 Cal. Admin. Code Section 20910 (c) (1976) upon the UFWs filing of a Notice of Intent to Take Access as described by 8 Cal. Admin. Code Section 20900 (e) CD (B). The list shall be provided within five days after service on Respondent of the Notice of Intent to Take Access.

(g) Allow UFW representatives, during the next period in which the UFW files a Notice of Intent to Take Access, to

organize among Respondent's employees during the hours specified in 8 Cal. Admin. Code Section 20900 (e) (3) (1976), and permit the UFW, in addition to the number of organizers already permitted under Section 20900 (e) (4) (A), one organizer for each fifteen employees.

(h) Grant to the UFW, upon its filing a written Notice of Intent to Take Access pursuant to Section 20900 (e) (1) (B), one access period during the 1978 calendar year in addition to the four periods provided for in Section 20900 (e) (1) (A) .

(i) Provide, during the UFWs next organizational drive among the Respondent's employees, the UFW with access to Respondent's employees during regularly scheduled work hours for one hour, during which time the UFW may disseminate information to and conduct organizational activities among Respondent's employees. The UFW shall present to the Regional Director its plans for utilizing this time. After conferring with both the Union and Respondent concerning the Union's plans, the Regional Director shall determine the most suitable times and manner for such contact between organizers and Respondent's employees. During the times of such contact, no employee will be required to engage in work-related activities, or forced to be involved in the organizational activities. All employees will receive their regular pay for the one hour away from work. The Regional Director shall determine an equitable payment to be made to nonhourly wage earners for their lost production time.

(j) Notify the Regional Director in writing, within 31 days from the date of the receipt of this Order, what steps have been taken to comply with it. Upon request of the Regional

Director, the Respondent shall notify him/her periodically thereafter in writing what further steps have been taken to comply with this Order.

Dated: May 23, 1978

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

NOTICE TO EMPLOYEES

After a trial at which each side had a chance to present its facts, the Agricultural Labor Relations Board has found that we interfered with the right of our workers to freely decide if they want a union. The Board has told us to send out and post this Notice.

We will do what the Board has ordered, and also tell you that:

The Agricultural Labor Relations Act is a law that gives all farm workers these rights:

1. To organize themselves;

2. To form, join, or help unions;

3. To bargain as a group and choose whom they want to speak for them;

4. To act together with other workers to try to get a contract or to help or protect one another; and

5. To decide not to do any of these things. Because

this is true we promise that:

WE WILL NOT do anything in the future that forces you to do, or stops you from doing, any of the things listed above.

Especially:

WE WILL NOT refuse to provide the Agricultural Labor Relations Board with a current list of employees when the UFW or any union has filed its "Intention to Organize" the employees at this ranch.

Dated: AMERICAN FOODS, INC.

By: _____
Representative Title

This is an official notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

American Foods, Inc. 4 ALRB No. 29
Case No. 77-CE-9-V

ALO DECISION

The complaint alleged that Respondent violated Section 1153 (a) of the Act by refusing to provide the Board with an employee list as required by Section 20910 (c) of the Board's regulations, after receiving Notice of Intent to Organize, thereby interfering with employees' Section 1152 rights. Respondent admitted its failure to supply a list, but contested the unlawfulness of its action on the grounds that providing the list would invade its employees' right to privacy and that the Board acted in excess of its authority in enacting Section 20910 (c).

The ALO rejected Respondent's right to privacy argument, citing NLRB precedent. The ALO also rejected Respondent's challenges to the legality of Section 20910 (c), citing prior Board decision. Henry Moreno, 3 ALRB No. 40 (1977). Finally, the ALO concluded that in light of Moreno, supra, Respondent's defenses were frivolous and a sham and recommended that the Board order Respondent to reimburse the UFW and the General Counsel for all costs incurred in the investigation and trial of the case, including, but not limited to, attorneys' fees.

BOARD DECISION

The Board affirmed the ALO's findings and conclusions that Respondent's conduct had violated the Act and interfered with the protected organizational rights of its employees. The Board declined to award litigation costs and attorneys' fees, however, rejecting the ALO's conclusion that Respondent's contentions herein are frivolous.

This summary is furnished for information only and is not an official statement of the Board.

STATE OF CALIFORNIA

BEFORE THE

AGRICULTURAL LABOR RELATIONS BOARD

AMERICAN FOODS, INC., Respondent, and THE UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	CASE NUMBER: 77-CE-9-V

Lorenzo Campbell, Esquire for the General Counsel

Scott A. Wilson, Esquire
Dressier, Stall & Jacobs of
Newport Beach, California for
the Respondent

Fritz Conle
of Oxnard, California
for the Charging Party

JEFFREY S. POP
Administrative Law Officer

POP AND HAHN
9595 Wilshire Boulevard
Suite 610
Beverly Hills, California 90212

(213) 273-5462 and 272-2776

STATE OF CALIFORNIA

BEFORE THE

AGRICULTURAL LABOR RELATIONS BOARD

AMERICAN FOODS, INC., Respondent, and THE UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	CASE NUMBER: 77-CE-9-V

Lorenzo Campbell, Esquire for the General Counsel

Scott A. Wilson, Esquire
Dressier, Stall & Jacobs
of Newport Beach,
California for the
Respondent

Fritz Conle
of Oxnard, California
for the Charging Party

DECISION

STATEMENT OF CASE

JEFFREY S. POP, Administrative Law Officer: This case was board before me in Oxnard, California, on July 6, 1977. The complaint alleges violation of Section 1153(a) of the Agricultural Labor Relations Act, (hereinafter called the Act) by American Foods Inc. (hereinafter called the Respondent). The Complaint

is based on charges filed on June 23, 1977, by United Farm Workers of America, AFL-CIO (hereinafter called the Charging Party). Copies of the Charges were duly served on Respondent. During the Hearing, General Counsel moved to amend the Complaint to include sub-paragraph 5 B(l) which alleges that on June 21, 1977 the Charging Party personally served a Notice of Intent to Organize on Respondent's General Manager, Taylor. There is well-established NLRB precedent which liberally allows amendment of a Complaint unless severe prejudice can be shown. See, e.g.; Starkville, Inc., 219 NLRB 595, 90 LRRM 1154 (1975); Jack La Lanne Management Corp., 218 NLRB 900, 89 LRRM 1836 (1975). Therefore, the proposed amendment is granted.

All parties were given full opportunity to participate in the Hearing, after the close thereof General Counsel and Respondent each filed a Brief in support of their respective positions.

Upon the entire record, including my observation of the demeanor of the witnesses, and after careful consideration of the Briefs filed by the parties, I make the following:

FINDINGS OF FACT

I. Jurisdiction

American Foods, Inc. is a California corporation which is engaged in agriculture in Ventura County, California. It is engaged in various farming operations in and around Ventura, California. Respondent may employ in excess of two hundred (200) employees during the peak season. Accordingly, Respondent is an

agricultural employer within the meaning of Section 1140(c) of the Act.

The Charging Party, United Farm Workers of America, AFL-CIO represents and bargains on behalf of employees with respect to wages, hours and working conditions, and is found to be a labor organization representing agricultural employees within the meaning of Section 1140.4(f) of the Act.

II. The Alleged Unfair Labor Practices

The Complaint alleges that Respondent violated Labor Code §1153(a) by failing and refusing to provide the Agricultural Labor Relations Board with an employee list, containing the names, current addresses and job classifications, as required by §20910(c) of the Board's regulations, after having received the Notice of Intent to Organize. By this refusal, General Counsel alleges that Respondent has interfered with, restrained and coerced and continues to interfere with, restrain and coerce, its agricultural employees in the exercise of rights guaranteed by Labor Code §1152 by committing unfair labor practices within the meaning of Labor Code §1153(a).

Respondent denies that its conduct constitutes a violation of the Act and further alleges as an affirmative defense that production of the requested information would violate the constitutional right to privacy of Respondent's employees.

III. Facts

For the most part, the facts surrounding the current litigation are largely undisputed. In June, Respondent was in the peak of its strawberry season. The strawberry season is normally of short duration. One does not have to stretch their imagination, to realize the relatively large number of employees required to harvest strawberry. Respondent employed approximately two hundred (200) employees during the "peak" period in June. These background facts proved quite important in the context of the instant litigation.

Roger Smith, Officer-in-Charge of the Oxnard Field Office of the Board testified that on June 14, 1977 a Notice of Intent to Organize was filed by the Charging Party. At approximately 1:30 p.m. Smith telephoned Respondent's General Manager, Taylor, and informed him that a Notice of Intent to Organize had been filed. Smith told Taylor that Respondent would have to provide to the Board within five (5) days a list of employees, with then current addresses and job classifications. Taylor responded that he did not like the idea of turning over confidential information about his employees to the Agricultural Labor Relations Board. Smith then requested that a member of his office visit Respondent and speak to the employees concerning their rights under the Act. Taylor answered that he did not think it would be necessary because Respondent's employees knew their rights.

Respondent's Taylor did not materially dispute Smith's recollection of the June 14th conversation.

Taylor testified that Respondent's warehouse foreman had been served with the Notice of Intent to Organize on June 14, 1977. Taylor admitted that he was notified by the warehouse foreman and received the Notice of Intent to Organize at approximately 1:30 p.m. on June 14, 1977.

Shortly after June 14, 1977, Taylor sought legal advise regarding whether or not Respondent should produce the names and addresses as requested by the Board.

On Monday, June 20, 1977, Taylor recalled that he spoke to a field examiner, Gonzalez, from the Agricultural Labor Relations Board. At that time Taylor stated that the Board Agent could inspect the names of the employees at his office, but they could not copy the list. Taylor also refused to produce the list at the Board offices.

On Monday, June 20, 1977, Smith again telephoned Taylor at approximately 3:30 p.m. At that time, Taylor stated that he was not going to comply with Smith's requests or the regulations of the Agricultural Labor Relations Board. Taylor responded that he had spoken to his lawyer and was represented by the Western Growers Association attorneys, Wilson and Dressier.

On or about June 21, 1977 Taylor admits that he was personally served with a second Notice of Intent to Organize.

During cross-examination, Taylor stated that the employee list was not submitted because there was no guarantee that the Union had a 10% showing of interest. Taylor stated that he knew that at least three (3) of his employees did not wish to have their names and addresses

distributed to the Union.[1] In essence Taylor claimed that it would constitute an invasion of privacy if Respondent consented to make the employee list available to the Board.

At the time of hearing Respondent continued to refuse to submit the employee list to the Regional Office.

IV. Legal Analysis and Conclusions of Law

The facts presented in the instant matter are clear. For those minor discrepancies, in instances where his recollection is contradicted by Respondent's Taylor, I credit Smith, the Officer-in-Charge of the Board's Regional Office in Oxnard.

As a witness, Taylor exhibited a selective, self-serving memory, which at times was questionable. For instance, with respect to the service of the initial Notice of Intent to Organize, it is clear that Taylor received the Notice of Intent to Organize from the warehouse foreman on June 14, 1977. Yet, Taylor testified he was uncertain of the date. However, Taylor admits speaking to Smith and to his attorney shortly after June 14, 1977. Taylor's inability to recall the date in this particular case only serves to cast a shadow on his credibility. Smith's precise recollection as to the June 14th date is therefore credited. Additionally, the foregoing causes the trier of fact to find that it is likely that Taylor's testimony is slanted to suit his needs. Since Smith, an ALRB employee is neutral in this matter and Taylor is

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1/ The relevance of Respondent's reasoning is questionable; however, it is noted for the record and was considered relevant for the sole purpose of deciding whether the current litigation is frivolous.

employed by Respondent, it is all the more probable that Taylor's testimony reflects his bias.[2]

The only substantive legal issue raised is whether Respondent's refusal to comply with the Board's Regulation §20910[3] is violative of Labor Code §1152 and Labor Code §1153(a)?

2/ For the purposes of this decision, the credibility findings are largely unimportant since the factual inconsistencies are relatively minor. Certainly they do not directly affect whether Respondent's conduct violated the Act.

3/ 8 Cal. Admin. Code §20910 reads in full:

Section 20910 - Pre-Petition Employee Lists.

(a) Any labor organization that has filed within the past 30 days a valid notice of intent to take access as provided in Section 20900(e)(1)(B) on a designated employer may file with the appropriate regional office of the Board two (2) copies of a written notice of intention to organize the agricultural employees of the same employer, accompanied by proof of service of the notice upon the employer in the manner set forth in Section 20300(f) . The notice must be signed by or accompanied by authorization cards signed by at least ten percent (10%) of the current employees of the designated employer.

(b) A notice of intention to organize shall be deemed filed upon its receipt in the appropriate regional office accompanied by proof of service of the notice upon the employer. As soon as possible upon the filing of the notice of intention to organize, the regional office in which the petition is filed shall telephone or telegraph the employer to inform him or her of the date and time of the filing of the notice.

(c) Within five (5) days from the date of filing of the notice of intention to organize the employer shall submit to the regional office an employee list as defined in Section 20310(a)(2). Upon its receipt in the regional office, the regional director shall determine if the 10% showing of interest has been satisfied and, if so, shall make a copy of the employee list available to the filing labor organization. The same list shall be made available to any labor organization which within 30 days of the original filing date files a notice of intention to organize the agricultural employees of the same employer. No employer shall be required to provide more than one employee list pursuant to this section in any 30 day period.

On June 14, 1977, the requisite Notice of Intention to Organize was received by the Regional Office as provided in ALRA Regulation §20910(b). Further, as admitted by Respondent, the Board immediately contacted Respondent on June 14, 1977. At that time, Respondent had the affirmative duty to respond pursuant to ALRA Regulation §2:0910(c.} .

From the totality of the record, it is clear that Respondent refused and still refuses to comply with the aforementioned well-established procedure. Respondent's conduct as viewed in the most favorable light was to attempt to place restrictions on the Board's utilization of the employee list. Respondent's only proffer of the list was conditioned upon requiring the Board's personnel to utilize the employee list (1) at Respondent's facility, (2) in Respondent's presence, and (3) without duplicating the list.

It is well settled that the foregoing conduct violates Labor Code §§1152, 1153(a). The circumstances supporting the formation and passage of Regulation §20910(c) were recently considered by the Board. In Henry Moreno,[4] the Board detailed the rationale behind as well as its power to enact Regulation §20910(a)-(c). The Moreno case is on "all fours" with the current litigation. In Moreno, the Board stated:

> "While we have emphasized the purpose of §20900 et seq. in protecting and encouraging employees in the exercise of §1152 rights, we also note the critical role of these sections, and particularly of §20910, as an aid to the Board's regulation of the election process it-

4/ 3 ALRB No. 40 (May 11, 1977)

> self. The fact that §20910 does not presently call for the Board to take any further formal steps with the list beyond such investigation as is necessary to insure that a proper list is supplied, and to determine the 10% showing of interest requirement, does not render it any less important in this regard."
>
> Id. at 6 (slip opinion)

The National Labor Relations Board long ago established a similar procedure whereby employers submit names, addresses and job classifications in representation matters to the Board. In the landmark NLRB case, Excelsior Underwear Inc., 156 NLRB 1236, 61 LRRM 1217 (1966), it was concluded:

> "Thus the requirement of prompt disclosure of employee names and addresses will further the public interest in the speedy resolution of questions of representation."
>
> Id. at 1243

Further, the NLRB "Excelsior Rule" has been upheld by the United States Supreme Court. See, NLRB v. Wyman Gordon, 300 U.S. 759 (1969).

In Henry Moreno the Board found:

> "We hold that it is a violation of Labor Code §1153(a) for an employer to refuse to supply a list of his employees as required by §20910 of our regulations. Such a refusal in itself interferes with and restrains employees in their exercise of §1152 rights. As the mobility of much of the labor force and the seasonal nature of much of the employment tend to reduce drastically the time periods during which organization at a particular employer can occur and be tested in the election process, we have enacted §20900 et seq. in order to encourage and protect the rights of employees to organize and designate representatives under these somewhat trying circumstances, and to fulfill better our own charge to provide them with a reliable election process without which these rights would be meaningless. Refusal to provide the list required in §20910 substantially impedes the ability of employees to exercise their §1152 rights, and it further impedes the reasonable attempt of the Board to carry out its statutory duties to protect those rights in a

> manner which is realistically responsive to the setting in which these rights are exercised."
> 3 ALRB No. 40 at 10 (slip opinion)

Merits of Respondent's Defense

First, Respondent claimed that it was not under a legal obligation to proffer the list of employees to the Board since it was not properly served with "Notice of Intent to Organize" as provided by the Board's Regulations. This procedural argument lacks merit for a variety of reasons. Respondent admitted that actual service was accomplished on June 14, 1977. As provided in §20300(f), Respondent was notified by telephone shortly after service was made. Both service and notification by telephone occurred on June 14, 1977. These facts are not denied or disputed. Additionally, it is clear that personal service was again made on Respondent on June 21, 1977. Respondent again refused to submit the required employee list. Respondent does not claim any procedural defects with respect to the second service.

From the foregoing it is clear that the procedural requirements of 8 Cal. Admin. Code §§20910(a)-(c), 20300(f) have been met. Further, it is well established under California law that:

> "The adequacy of service 'so far as due process is concerned' is dependent on whether or not the form of substituted service provided for such cases and employed is reasonably calculated to give him actual notice of the proceedings and an opportunity to be heard."
> Shoei Kako Co. v. Supreme Court of San Francisco, 33 Cal. App. 3d 808, 819, 109 Cal. Rptr. 402, 409 '(1973); See also, Milliken v. Myer 311 U.S. 457, 463, 61 S. Ct. 339, 342; 85 L. Ed. 278.

Respondent admits actual notice and receipt of the Notice of Intent to Organize. Consequently, Respondent's procedural defense is totally lacking merit and is hereby disregarded.

As a second defense, Respondent claims that its employees' right to privacy would be infringed if it provided the Board with a list of employees as required by §20910(c). This defense is also bogus, fruitless and patently absurd.

Respondent's "right to privacy" argument is not novel. The NLRB and the Courts have consistently rejected it. See generally, NLRB v. Beech-Nut Life Savers Inc., 406 P. 2d 253, 69 LRRM 2846, (2nd Cir. 1968); NLRB v. British Auto Parts, 266 F. Supp. 368, 7.0 LRRM 2065 (C.D., Cal. 1967), aff'd (9th Cir., 1969); NLRB v. Hanes Hosiery Div., 384 F. 2d. 188 66 LRRM 2264 (4th Cir., 1967).

All of these authorities hold that the mere possibility that employees will be inconvenienced by telephone calls or visits to their homes is far outweighed by the public interest in an informed electorate. Additionally, every employee has the right to speak or to refuse to speak with either the employer or the Union regarding unionization.

Respondent has not offered any meritorious defenses to its flat refusal to comply with the requirement of 8 Cal. Admin. Code §20910(c). Upon viewing the totality of the circumstances, I find the excuses proffered by Respondent to be pretextual. The true reason for Respondent's action herein is to avoid an election and to keep employees from exercising their rights under §§1152 and 1153(a) of the Act.

By the time of the hearing, Respondent had already succeeded in this purpose. The 1977 strawberry season was completed. The employees had been layed off without gaining the benefit of the rights guaranteed by §1152 of the Act.

This litigation, especially in light of the Board's decision in Henry Moreno, 3 ALRB No. 40[5] , is totally frivolous and a sham.

Based on the foregoing, I find that Respondent's refusal to provide the employee list as required in §20910(c) violated §1152 and §1153(a) of the Act.

V. The Remedy

As found appropriate in Henry Moreno, I will recommend, in addition to the usual cease and desist remedies set forth in the Order attached hereto, the following remedies in order to enable organizers to make such contacts with employees which they might have made in those employees' homes but for the employer's unlawful conduct:

(1) During the next following access period which the Charging Party elects to take pursuant to 8 Cal. Admin. Code §20900(e) et seq., as many organizers as are entitled to access under §20900(e)(4)(A) may be present during working hours for organizational purposes and may talk to workers, and distribute literature, provided that such organizational activities do not disrupt work.

5/ I am cognizant that the Board decided Henry Moreno approximately one month prior to the events herein.

During those access periods before and after work and during lunch specified in §20900(e)(3)(A) and (B), the limitations on numbers of organizers specified in §20900(e)(4)(A) shall not apply.

(2) For each one month access period during which an employer refuses to provide an employees' list as set forth in 8 Cal. Admin. Code §20910(c), the Charging Party shall have one additional such access period during the employer's next peak season, whether in this or the following calendar year.

General Counsel has requested that Respondent reimburse the ALRB and the UFW for all costs incurred in the investigation and trial of the case including, but not limited to, attorney's fees. There is case authority and precedent for such relief in extreme cases. The leading case in this regard is Tiidee Products Inc., 194 NLRB 1234 (1972). In. that case the Board, upon accepting remand of the case with respect to remedy held:

> ...While we do not seek to foreclose access to the Board and courts for meritorious cases, we likewise do not want to encourage frivolous proceedings. The policy of the Act to insure industrial peace through collective bargaining can only be effectuated when speedy access to uncrowded Board and Court dockets is available. Accordingly, in order to discourage future frivolous litigation to effectuate the policies of the Act, and to serve public interest we find that it would be just and proper to order Respondent to reimburse the Board and the Union for their expenses incurred in the investigation, preparation, presentation and conduct of these cases, including the following costs and expenses incurred in both the Board and court proceedings: reasonable counsel fees, salaries,

> witness fees, transcript and record costs, printing costs, travel expenses, and per diem, and other reasonable costs and expenses. Accordingly, we shall order Respondent to pay to the Board and the Union the above-mentioned litigation costs and expenses."
>
> Id. at 1236-37

The standard on which the granting of attorney fees and costs turns *is* frivolity of the litigation. The NLRB's definition of frivolity is enunciated in Hecks, Inc., 191 NLRB , 88 LRRM 1049 (1974):

> "...As we understand the courts' use of 'frivolous' in this context, it refers to contentions which are clearly meritless on their face..."
>
> Id. at 889

Similarly, the Board has the discretion in an appropriate case to grant attorneys' fees and costs. Valley Farms and Rose Farms, 2,ALRB No. 41 (1976); Tiidee Products, 194 NLRB 1234, cal Teamsters (United Parcel Service), 203 NLRB 799 enforced *2* F. 2d 1075 (9th Cir., 1975). As indicated in the Legal analysis and Conclusion section infra, Respondent's "defenses" is not only unmeritorious or unsubstantial, they are clearly a pretextual in nature. Respondent's continued utilization of the Board's processes inures to its benefit. Not only was the charging Party's organizational drive stymied by Respondent's illegal tactics, but the Charging Party's future ability to communicate with employees is also impaired as the litigation process continues. The seasonal layoff conveniently uprooted are employees in further impairing the Charging Party's position, when at the time of hearing Respondent still refused to comply with the Regulation §20910(c).

The rationale offered by Respondent is meritless on its face thereby being specious and frivolous. I therefore find that this case is an appropriate one to award the General Counsel and Charging Party attorneys' fees and costs.[6]

Upon the foregoing findings of fact and conclusions of law, and upon the entire record in this proceeding, and pursuant to §1160.3 of the Act, I hereby issue the foregoing recommendation:

ORDER

Respondent, American Foods, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to provide the ALRB with an employee list as required by §20910(c) of the Regulations of the Agricultural Labor Relations Board.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Post at its premises copies of the attached "Notice to Employees". Copies of said notice, on forms provided by the appropriate regional director, after being duly signed by the Respondent, shall be posted by it for a period of 90

6/ The amount of attorneys' fees and costs should be determined according to proof utilizing California Code of Civil Procedure §1021 et seg. as a guideline. It is inappropriate for Respondent to pay any pre-complaint investigation costs or expenses to any party. These costs and fees are specifically excluded from this remedy.

consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced or covered by any other material. Such notices shall be in both English and Spanish.

(b) Mail a copy *of* the notice, in both English and Spanish, to each of the employees in the bargaining unit, at his or her last known address, not later than 30 days after the notice is required to be posted on the Respondent's premises.

(c) Read a copy of the notice, in both English and Spanish, to gatherings of its bargaining unit employees, at a time chosen by the Regional Director for the purpose of giving such notice the widest possible dissemination.

(d) Provide the ALRB with an employee list as required by §20910(c) of the Regulations of the Agricultural Labor Relations Board.

(e) Provide the UFW with an employee list when the 1977 harvest begins and every two weeks thereafter.

(f) Upon filing of a written notice of intent to take access pursuant to 8 Cal. Admin. Code §20900(e)(1)(B) the UFW shall have the right of access as provided by 8 Cal. Admin. Code §20900(e)(3) without restriction as to numbers of organizers. In addition, during this same period, the UFW shall have the right of access during working hours for as many organizers as are permitted under 8 Cal. Admin. Code §20900(e)(4)(A), which organizers may talk to workers and distribute literature provided that such organizational activities do not disrupt work.

(g) Upon filing a written notice of intent to take access pursuant to 8 Cal. Admin. Code §20900 (e) (1) (B), the UFW shall be entitled to one access period during the current calendar year in addition to the four periods provided for in 8 Cal. Admin. Code §20900(e)(1)(A).

(h) Reimburse the Board and the UFW for reasonable attorneys' fees and costs incurred in the preparation and conduct of this trial.

(i) Notify the Regional Director, in writing, within ten (10) days from the date of the receipt of this Order, what steps have been taken to comply herewith. Upon request of the Regional Director, the Respondent shall notify him or her periodically thereafter, in writing, what further sheps have been taken to comply herewith.

DATED: September 4, 1977

AGRICULTURAL LABOR
RELATIONS BOARD

By _____

JEFFREY S. POP
Administrative Law Officer

N O T I C E T O E M P L O Y E E S

POSTED BY ORDER OF THE AGRICULTURAL LABOR RELATIONS BOARD An Agency of the State of California

After a trial at which all sides had the opportunity to present their evidence, the Agricultural Labor Relations Board has found that we violated the Agricultural Labor Relations Act, and has ordered us to post this Notice and we intend to carry out the order of the Board.

The Act gives all employees these rights:

To engage in self-organization;
To form, join or help unions;
To bargain collectively through a representative of their own choosing;
To act together for collective bargaining or other mutual aid or protection; and
To refrain from any and all these things.

WE WILL NOT do anything that interferes with these rights. More specifically,

WE WILL NOT interfere with your rights of self-organization, to form, join or assist any labor organization by refusing to provide the ALRB with a current list of employees when, as in this case, the UFW or any union has filed its "Intention to Organize" the employees of American Foods, Inc.

WE WILL respect your rights to self-organization, to form, join or assist any labor organization, or to bargain collectively in respect to any term or condition of employment through United Farm Workers of America, AFL-CIO, or any representative of your choice, or to refrain from such activity, and WE WILL NOT interfere with, restrain or coerce our employees in the exercise of these rights.

You, and all our employees are free to become members of any labor organization, or to refrain from doing so.

WE WILL reimburse the Agricultural Labor Relations Board and the UFW for reasonable attorneys' fees and costs incurred in the preparation and conduct of this trial.

Dated: _____

AMERICAN FOODS, INC.

By: _____

(Representative)